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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,578

02/19/2004

Darel J. Reicks

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7590

09/27/2006

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EXAMINER

HERRERA, JENNIFER

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/782,578	REICKS, DAREL J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jennifer P. Herrera	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 8/18/2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/18/2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

DETAILED ACTION

*Response to Amendment*

1. The amendments filed August 18, 2006 to the claims, specification, and drawings have been entered into the record.

*Drawings*

As stated by the Examiner in the Office Action dated June 9, 2006.

*The drawings are objected to because of the placement and usage of the reference numbers. The informalities of the drawings are defined as:*

- a. the reference number "10" is unclear to what is defining the platform,*
- b. the reference number "20" is unclear to what is defining the transport mechanism,*
- c. "78" in Figures 1, and 3-9, was not defined in the specification but 78a was. It is understood for each figure where "78" is used should be replaced by "78a," the 1<sup>st</sup> pivot pin,*
- d. "60" in Figures 8 & 9 was not defined in the specification but "60a" was. It is understood the each figure that uses "60" should be replaced by "60a," the 3<sup>rd</sup> pivot pin,*

*e. in Figure 10, reference numbers "44b" and "46b" were reversed. "44b" is defined as the 2nd track but is shown as the 1<sup>st</sup> roller. Respectively "46b" is shown as the 2<sup>nd</sup> track,*

*f. in Figure 10 and 11, reference numbers "46b" and "46c" are used. Except the reference numbers used to define the 1<sup>st</sup> and 2<sup>nd</sup> rollers respectively are "46a" and "46b" not "46b" and "46c" as shown in the figures, ...*

2. Applicant has kept reference number "46b" as the roller for the tracks. Except as shown in the amended drawings in Figure 10 and 11, "46b" refers to being the 1<sup>st</sup> roller when in fact, as understood by the Examiner, "46b" should be referencing the 2<sup>nd</sup> roller respectively with the second track "44b".

***Claim Rejections – 35 USC § 112***

As stated by the Examiner in the Office Action dated June 9, 2006.

*a. Claims 1-11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

*b. Regarding claim 1, it is unclear if this claim is a combination or subcombination claim. Note "trailer" in the intended use phrase in the preamble and "trailer" positively recited in the body of the claim. The preamble should be*

*amended to positively claim the "trailer" to provide a combination or "attached" in lines 4 and 5 should be changed to "attachable" to provide a subcombination claim. Also if "attached" is changed then "is" in line 7 should be changed to "would be" and "an apparatus" inserted after "trailer" in line 3.*

*c. Regarding claims 2-10, "arrangement" in line 1 should be "apparatus".*

*d. Regarding claim 11,*

- i. "a lower portion" in line 3 makes the claim unclear since the lower portion may be perceived to be interiorly in the lower portion of the vehicle and not exteriorly,*
- ii. "disposed below and mounted to the vehicle" in line 5 may be considered to be in the interior of vehicle, which makes the claim unclear.*

3. Applicant argues the rejection for the language used in the claim. Examiner understands the "the lower portion" of the trailer to be the undercarriage of the trailer body. The applicant states that the rail assembly is not limited to exterior use but also interior. Examiner's rejection for the unclear claims emerge from the applicant's specification and drawings filed February 9, 2004. The specification continuously states "lower surface of the trailer body's bed", which can be understood either interiorly or exteriorly. Except the drawings show an exterior device. Unlimiting the

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invention to an interior storage would take space away from the cargo to be transported within the trailer. Making the invention capable of interior use of the trailer bed would contradict the Applicant's argument of a reduced operating and storage space device, as stated in the specification on page 2, line 22, and page 3, lines 1-3.

*Claim Rejections – 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Disque et al. (U.S. 4,579,503) ("Disque") in view of Paulson et al. (U.S. 4,991,890) ("Paulson"), and further in view of Novotney et al. (U.S. 3,113,684) ("Novotney").

a. Regarding claim 1, Disque discloses a side-wall opening on a trailer and a transport mechanism 10 attached to the undercarriage of the trailer in column 1, lines 65-59, column 2, lines 1-8, and column 3, lines 5-6 and 10-13.

Disque discloses a first hydraulic cylinder 28 connected to the trailer and

transport mechanism. Disque also discloses angled arms 82 in column 2, lines 42–50. Disque continues to disclose a platform 70 pivotally connected to the angled arms 89 in column 4, lines 53–66. Disque fails to teach angled arms as displayed in application Figure 2. Paulson discloses the angled arms 24 in Figure 1, and in column 2, line 8. Disque and Paulson fail to teach a pair of angled arms and a 2<sup>nd</sup> hydraulic cylinder. Novotney discloses a pair of angled arms 12 and 13 in column 2, lines 3–10. Novotney also discloses a second hydraulic cylinder 15 in column 1, lines 71–72. Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Paulson's angled arm, and Novotney's paired arms and hydraulic cylinder to Disque's apparatus to establish a well-equipped side-loading platform. Adding Paulson's rigid angled arms to Disque's device would have a stable support for vertical movement. Adding Novotney's paired angled arms and hydraulic cylinder would first add a stable support for vertical and horizontal movement and secondly add the feature of the configurations of the platform. Having the ability to retract and extend allows for the apparatus to have an easy storage position. Pivotaly connecting every structural element allows the apparatus to adapt to any usage the platform may come in contact.

- b. Regarding claim 2, Paulson discloses the angled arms to form an obtuse angle in Figure 1 and column 2, line 8.
  - c. Regarding claim 3, Novotney discloses tubular steel end sections in Figure 2.
  - d. Regarding claim 4, Novotney discloses tubular steel angled arms (13) in Figure 2. Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Novotney's tubular steel to the device disclosed in claim 2 to ensure a durable material.
  - e. Regarding claim 5, Disque discloses tracks in column 2, lines 1–8 and lines 47–50.
  - f. Regarding claim 6, Disque discloses plural rollers to engage the displacement of the platform via the tracks in column 3, lines 64–68.
  - g. Regarding claim 7, Disque discloses a coupling link in column 4, line 53–66.
  - h. Regarding claim 8, Novotney discloses the 2<sup>nd</sup> hydraulic cylinder centrally positioned in Figure 1, and column 1 lines 71–72 and column 2 , lines 1–10.
- Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Novotney's hydraulic cylinder to the apparatus disclosed in claim 1 to coordinate the movement of the angled arms to the hydraulic cylinder. The arms and cylinder are rotating upon the same axis.



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5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Disque in view of Paulson in view of Novotney as applied to claim 1 above, and further in view of Perkins et al. (U.S. 4,007,844) ("Perkins"). Perkins discloses at least one chain 33 suspended from the trailer to the platform in Figure 1, and column 3, lines 14-16. Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Perkins' chain to the apparatus disclosed in claim 1 to establish a secure lock system for the platform in the folded position.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Disque in view of Paulson in view of Novotney as applied to claim 1 above, and further in view of Ablabutyan et al. (U.S. 6,183,187 B1) ("Ablabutyan"). Disque discloses a ramp pivotally connected to the platform in column 4, lines 28-31. Ablabutyan discloses the ramp being foldable with respect to the platform in Figure 6 and column 3, lines 30-35. Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Ablabutyan foldable ramp to the apparatus disclosed in claim 1 to have a space reducer during the folded position and an alleviator for loading and unloading cargo as an extension of the platform.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Disque in view of Paulson in view of Novotney, and further in view of Ablabutyan. Disque

discloses a side-loading trailer with a rail on the undercarriage of the trailer in column 2, lines 1–8 and lines 48–50. Disque also discloses a carriage 12, platform 11, and arms 82 and 89 in column 2, lines 42–50. Disque continues to disclose a coupling link 79 for the arms in column 4, lines 53–66. Disque finally discloses the 1<sup>st</sup> hydraulic cylinder 28 in column 2, lines 1–8. Paulson discloses the angled arms 24 in Figure 1 and column 2, lines 8. Novotney discloses the 2<sup>nd</sup> hydraulic cylinder 15 and the displacement of the paired angled arms 12 and 13 in column 1, lines 71–72, and column 2, lines 1–10. Ablabutyan discloses the foldable ramp in column 3, lines 30–35. Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add Paulson's angled arm, Novotney's hydraulic cylinder and paired arms, and Ablabutyan's foldable ramp to Disque's device to give a user a device easily movable for loading and unloading. Combining all of the structural elements of the inventors would resolve many of the limitations encountered during operation of prior arts. Adding Paulson's rigid angled arms to Disque's device would have a stable support for vertical movement. Adding Novotney's paired angled arms and hydraulic cylinder would first add a stable support for vertical and horizontal movement and secondly add the feature of the configurations of the platform. Adding Ablabutyan's

foldable ramp to Disque's device would reduce space needed for the ramp for the undercarriage of the trailer.

***Response to Arguments***

8. Applicant has not responded to the rejections filed by the Examiner on June 9, 2006. Applicant is arguing structural element from the references cited by the Examiner. Except the applicant's response is not based on Examiner's rejection. For example, applicant's response, "The first and second parallelograms linkages 14 and 15 of Disque are not "angled", but rather are linear structural members, tapered at a first end and generally flat at a second, opposed end.", is accepted by the Examiner. Except the Examiner did not use Disque's 14 and 15 to reject the "angled arms". Instead as stated by the Examiner in the Office Action filed June 9, 2006, "...*Disque also discloses angled arms 82 in column 2, lines 42-50. Disque continues to disclose a platform 70 pivotally connected to the angled arms 89 in column 4, lines 53-66...*". Examiner reference 82, which is linear but the 89 was used to attach the platform, which is clearly an angled arm.

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Disque, Paulson, and Novotney have sufficient motivation to combine with each other as well as with the secondary references Perkins and Ablabutyan.

### *Conclusion*

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer P. Herrera whose telephone number is (571) 272-6269. The examiner can normally be reached on 0830-1700 hrs Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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9/11/06



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